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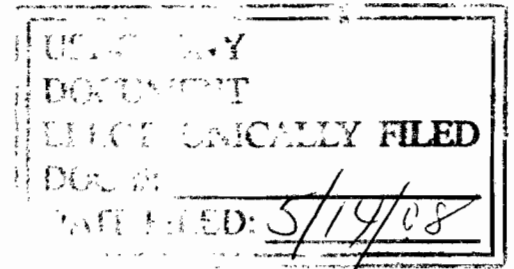
DUANE C. MILLER
MICHAEL AXLINE
A. CURTIS SAWYER, JR.

TRACEY L. O'REILLY
TAMARIN E. AUSTIN
EVAN EICKMEYER
DANIEL BOONE

May 13, 2008

VIA FEDERAL EXPRESS AND EMAIL

Honorable Shira A. Scheindlin
United States District Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 1620
New York, New York 10007-1312



Re: *In Re MTBE Products Liability Litigation*, MDL 1358
This Document Relates to: *Tonneson, et al. v. Sunoco, Inc., et al.*, and *Basso, et al. v. Sunoco, Inc., et al.*
**Plaintiffs' Request for Extension of Case Management Order #35 Deadline
Regarding Deposition Designations**

In Re: Methyl Tertiary Butyl Ether ("MTBE") Products Liability Litigation
Dear Judge Scheindlin:

Doc. 1839

We are writing to request a short extension of the deadline to May 16, 2008, for plaintiffs to submit additional deposition designations in the above matter pursuant to Case Management Order #35 ("CMO #35").

CMO #35 set forth a series of deadlines for completion of expert discovery and dispositive motions as well as deadlines for certain pre-trial activities. CMO #35 called for expert depositions to be completed by February 29, 2008, Daubert motions to be completed by April 25, 2008, and dispositive motions to be filed by March 28, 2008. As the Court is aware, each of these deadlines has been extended to allow the parties adequate time to complete each phase as well as to accommodate the schedules of different parties.

During early 2008, on several occasions plaintiffs' counsel informally met and conferred with counsel for defendants ExxonMobil Corporation and Sunoco, Inc. to determine what additional deposition designations of defendants' witnesses would be necessary. Informal meet and confer indicated that, with potentially one exception, both defendants anticipate presenting the live testimony of witnesses who testified on their behalf in *Tonneson* and *Basso*. (Ex. 1, Jan. 30, 2008, Email from T. O'Reilly to All Counsel.) After ExxonMobil and Sunoco preliminarily

stated that their *Tonneson* and *Basso* witnesses would be available to testify at trial, plaintiffs counsel then needed to undertake a review of deposition testimony in the *South Tahoe Public Utility District v. Atlantic Richfield Co., et al.* ("*South Tahoe*") matter as well as depositions taken of defendants' witnesses by other plaintiffs' counsel in the MDL to determine if any additional testimony would be needed in the *Tonneson* and *Basso* matters.

On January 30, 2008, plaintiffs served a designation of plaintiff Patricia Hannigan's deposition in this matter. (Ex. 1, Jan. 30, 2008, Email from T. O'Reilly to All Counsel.) Mrs. Hannigan passed away unexpectedly in the Fall of 2007. Plaintiffs and defendants initially agreed to extend the deadline to serve additional deposition designations to Friday, May 9, 2008, but defendants have declined to agree to any further extensions of the deadline beyond that date. (Ex. 2, May 9, 2008, letter from J. Kalnins-Temple to T. O'Reilly.)

Several discovery problems have impaired plaintiffs' ability to complete additional deposition designations prior to May 9, 2008. The deposition of a key former Sunoco employee, Robert King, will not be completed until May 19, 2008. Mr. King, a resident of Pennsylvania, is unlikely to be able to appear at trial due to a family care issue. Unfortunately, identifying all potentially relevant witnesses and locating accurate transcripts for depositions taken by other MDL plaintiffs' counsel has proved more complicated and time consuming than originally anticipated.¹ Additionally, not all fact depositions were completed in time for plaintiffs' deposition designation deadline. For example, depositions of certain Mobil liability personnel were only completed within the last few weeks. Finally, the parties have been extremely busy over the last three months completing fact and expert discovery as well as the motions contemplated by CMO #35. For example, the parties recently resolved the dispute over the depositions and document productions of plaintiffs' environmental sampling and analytical litigation consultants. Plaintiffs will, in fact, be producing these non-designated experts for limited depositions shortly. Plaintiffs also finally completed the depositions of defendants' real estate experts on May 8 and 9, 2008.

Plaintiffs' counsel is prepared to provide designations of witnesses deposed in the *South Tahoe* matter by Friday, May 16, 2008. Plaintiffs are also prepared to confirm the list of defendants' *Tonneson* and *Basso* specific witnesses that plaintiffs' intend to call at trial (even though plaintiffs' witness list is not due until July 11, 2008) by Friday, May 16, 2008, for purposes of identifying witnesses who will not be available. Plaintiffs may thereafter supplement designations as additional deposition transcripts become available, or as necessary due to a change in witness availability. Plaintiffs are agreeable to extending the same courtesy to defendants.

¹ Plaintiffs' counsel recently asked defendant ExxonMobil's counsel for a list of deponents that ExxonMobil produced in the MDL, but was advised that ExxonMobil did not have such a list.

May 13, 2008

Plaintiffs respectfully request the Court to grant plaintiffs an extension to Friday, May 9, 2008, to submit deposition designations from *South Tahoe* and identify defendants' witnesses whom plaintiffs intend to call at trial.

Respectfully submitted,


Tracey L. O'Reilly

cc: Tonneson and Basso Counsel (via email)

Liaison Counsel (via email)

Rachel Spector (via email)

All Counsel (via LNFS)


Plaintiffs may submit deposition designations by May 16, 2008. Other deadlines in CMO #35 are modified as follows:

Defendants' deadline to submit objections to plaintiffs' designations and counter-designations: June 13, 2008

Plaintiffs' deadline to submit objections to defendants' counter-designations: July 7, 2008

SO ORDERED:

Dated: May 14, 2008
New York, NY


Shira A. Scheindlin
U.S.D.J.